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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Letter dated 16 April 1996 from the Permanent Representative of Morocco to the United Nations Office at Geneva, addressed to the Chairman of the Commission on Human Rights

I have the honour to transmit herewith a note entitled "Information on the status of the process in Sahara" which the Permanent Mission wishes to bring to your attention in response to the various reports and written statements of a number of NGOs on this question.

I should be grateful if you would have the text circulated in both United Nations working languages as an official document of the fifty-second session of the Commission on Human Rights.

(Signed) Nacer Benjelloun-Touimi
Permanent Representative

Annex

INFORMATION ON THE STATUS OF THE PROCESS IN SAHARA

At the fifty-second session of the Commission on Human Rights, a number of non-governmental organizations (NGOs) have submitted written statements on the Saharan question in which they claim that Morocco is largely to blame for the fact that the MINURSO identification process, and consequently the United Nations settlement plan, are at a standstill.

The Permanent Mission of the Kingdom of Morocco in Geneva, while it can do nothing to counter the "underdog" syndrome, i.e. the preference for the presumed weaker party, wishes nevertheless to provide a number of clarifications and make a number of observations on the logic of the arguments put forward.

Firstly, we cannot accept the mistaken assumption of certain NGOs that Morocco "which is the diplomatically and militarily stronger party and controls the territory of Sahara" is necessarily the party exerting the most pressure on the process and hindering the implementation of the settlement plan.

It is alleged by a number of NGOs that the Moroccan authorities are on the one hand preventing persons who are eligible to vote and have completed the necessary forms from going to United Nations registration centres and on the other are presenting non-Saharan applicants or else are confiscating registration receipts from applicants with a view to fraudulently presenting other applicants when voter registration cards are issued.

It should be noted in this regard that, on 16 March 1995, the Permanent Mission sent to all Member States and NGOs a note containing information on the MINURSO registration and identification process in Sahara, in which it replied in detail to these allegations and others connected with the testimony of Mr. Frank Ruddy, the former United States Ambassador and former Vice-Chairman of the MINURSO Identification Commission.

Suffice it to say that, because of its complexity, the question of registration and identification was the subject of meticulous and arduous consultations over many months and that it was agreed that both parties should be involved in the initial stages. It should also be emphasized that it is the Identification Commission, whose members are all appointed by the Secretary-General after consultation with the Security Council and States Members of the United Nations, which must interview potential voters and issue a court-type decision.

In other words, it would be pointless for Morocco to have non-Saharans participate, as they would in any event be rejected by the Commission, or to prevent genuine Saharans from registering, since they can appeal a decision to exclude them from the voters' list.

In this regard, Mr. Boutros-Ghali states clearly in his report S/1994/819, of 12 July 1994, that "Once decisions have been made on voter eligibility, the Identification Commission will publish a voters' list and

applicants will then receive their voter's registration card from the centres. Applicants who do not appear on the voters' list have the right to appeal the Commission's decision. Similarly, persons on the list have the right to challenge the inclusion of persons they do not believe qualified" and concludes on this matter (report S/1994/1420 of 14 December 1994) that "the Identification Commission was an independent body whose members ... would carry out their mandate with impartiality, fairness and integrity".

With regard to the identification procedure, the Secretary-General noted in his report S/1994/819 that it had been meticulously worked out. He notes in particular that "After having been photographed and fingerprinted, each applicant will appear before the identification team, which, in the presence of the relevant sheikhs and the official observers, will question the applicant concerning his or her identity and eligibility". In the same report, Mr. Boutros-Ghali adds "in accordance with the settlement plan, the official observers will be invited to submit to the Identification Commission any comments in writing, within 24 hours of the interview. These comments will be confidential and will not be communicated to the other party or to the sheikhs".

Concerning the further argument that the Identification Commission's work is not sufficiently transparent, it should first be noted that the process was made confidential in order to avoid pressure being exerted by the parties on members of the Commission, sheikhs and observers. Furthermore, the Identification Commission's decisions are open to appeal. Finally, as the Secretary-General pointed out in his last report to the Security Council (S/1996/43 of 19 January 1996), "While agreeing to the need for transparency, [his special envoy to the region] rejected any notion that the Commission had failed to observe complete impartiality in the performance of its tasks". In paragraph 16, he went on to say that "it was agreed [in order to increase the transparency of the process and reduce mistrust] that the Commission would make arrangements to share with both parties, in a suitable format, a list of applicants identified so far as eligible to vote, as well as a list of applicants still to be identified".

Mr. Boutros-Ghali concludes by noting that, on his return from the region, his Special Envoy had been reinforced in his impression that "on the whole, the Commission is performing its difficult task with the utmost regard for fairness and impartiality. The task of the Commission is not rendered any easier by the parties' critical scrutiny of its work and allegations impugning the integrity of individual members".

As for the need for "independent observers" to supervise the MINURSO process, it is worth noting that, under the United Nations settlement plan accepted by the parties and endorsed by the Security Council, the referendum process is to be organized and controlled from start to finish by the United Nations. In other words, the referendum will be organized by qualified, honest and independent international personnel under the responsibility of the Secretary-General of the United Nations and the continuous supervision of the Security Council and ultimately of the United Nations General Assembly. It is therefore astonishing to note the

insistence of some circles in wishing to impose another control structure similar to those set up for referendums, elections or plebiscites organized by one of the parties, with the United Nations simply supervising.

As for who is to blame for the standstill reached in the identification process itself, we should remember what has happened at least since the eve of the adoption of the identification criteria, when, as pointed out by Prime Minister Filali in a letter addressed to the Secretary-General on 27 June 1995 (S/1995/514), the Kingdom of Morocco accepted the identification procedure proposed by the Secretary-General after the adoption of Security Council resolution 725 (1991) of 31 December 1991, notwithstanding the serious reservations which it had expressed at the time, whereas the other party had rejected them outright.

Moreover, Morocco had subsequently accepted the compromise interpretation and application of the criteria proposed by the Secretary-General to accommodate the other party's position, whereas the other party refused and only reluctantly agreed to do so after the Security Council had described the compromise as a sound basis for launching the identification operation in resolution 907 (1994) of 29 March 1994, i.e. more than two years after the criteria had been established by the Secretary-General of the United Nations.

Since then and contrary to this agreement, the other party instructed its sheikhs systematically to oppose almost any request by persons applying for identification on the basis of criteria 4 and 5 at the very same time it agreed, in a letter signed by its so-called chiefs, to the application of the compromise.

The other party thus persists in falsifying a basic truth, which holds that any person who submits an application continues to be nothing more than an applicant until the Identification Commission reaches a decision (and this holds true for all applicants residing outside the Territory who have been registered but not identified). The other party cannot, moreover, take the place of the Identification Commission by deciding who is Saharan and who is not even before the Commission has reached a decision on the basis of the established criteria.

In paragraph 28 of the above-mentioned document S/1996/43, the Secretary-General does not fail to agree with this view, stating that "In his discussions with Frente POLISARIO, my Special Envoy emphasized that the Identification Commission was obliged to process all applications submitted before the expiry of the relevant deadline. He also insisted that, under the settlement plan, the parties were duty-bound to cooperate in the identification of all applicants".

The delays in the identification operation and the current standstill are thus attributable beyond any possible doubt to the other party, which has long refused to accept the identification criteria that two successive Secretaries-General have described as "a just and fair basis for the monitoring of the referendum" (doc. S/23299 of 19 December 1991 and S/25170 of 26 January 1993) and which, after having reluctantly agreed to their implementation, now refuses to apply them fully, since it continues "to decline to cooperate in the identification of another large group of

applicants, i.e. those appearing under the codes H41, H61 and J51/52 [referred to in the 1974 Spanish census], except for those few who are eligible by virtue of their inclusion in the 1974 census" (see para. 27 of doc. S/1996/43).

With regard to conditions in the Tindouf camps in Algeria, the same syndrome seems to make some NGOs attribute human rights violations, including the ill-treatment attested to by observers, to the extremely difficult conditions in the desert that are the result of the harsh climate, rough terrain and lack of infrastructure, whereas it has been determined that such violations have indeed been committed.

The Permanent Mission has, moreover, already had occasion to draw the attention of United Nations bodies to the dozens of Saharans, mostly women, who escape from the Tindouf camps every few weeks and who testify to the harsh restrictions and harassment to which they are subjected in the camps, including the fact that the population is being imprisoned inside a double security line, i.e. the other party's police apparatus and the host country's military authority, to prevent it from leaving the regions.

It should be stated and recalled that the Kingdom of Morocco has been cooperating with the Centre for Human Rights for a long time in order to shed light on all cases of alleged missing persons, particularly in the context of the Saharan question.

The Permanent Mission would like to quote extracts from two letters, dated 30 August and 11 December 1995, which were sent to it by the Centre for Human Rights and which show that Morocco is firmly determined to cooperate and to clear up all documented cases.

The first letter notes that, at the August session, "the working group has had the pleasure of meeting with representatives of the [Moroccan] Government, with whom it held fruitful discussions. It expresses its warmest appreciation for the third set of 19 cases which the Government transmitted to it on that occasion together with new information on their fate".

The second letter stresses that, "on the basis of the replies which have been received from your Government and on which the sources have never made any comments during the six-month time-frame, the working group has decided to regard the 26 cases listed in the annex as having been cleared up".

The Permanent Mission would also like to point out that the above-mentioned NGO documents refer to "hundreds of missing persons", but give only a few names in connection with which searches have never been interrupted.

In this context, it is necessary to denounce the practices of the other party and its allies, which do not hesitate, in order to pad out the lists submitted to NGOs and to the Centre for Human Rights, to include the same alleged missing person under several names. As already pointed out to the Centre for Human Rights, it is not difficult to manipulate names in a nomadic society with an oral tradition and to refer to a person either by his patronymic and his first name or by adding the name of his grandfather to that

of his father. In some cases, the same person is referred to by names made up, for example, on the basis of his ethnic group, his physical characteristics and even his occupation.

Worse still, the other party made a practice of never declaring the losses it suffered as a result of attacks, and, in order to keep up the morale of the other armed elements and for obvious propaganda purposes, of claiming that those who died on the battlefield were Saharan missing persons about whom clarifications should be sought.

In actual fact, it is quite clear from the documents published by various United Nations bodies that the Kingdom of Morocco is cooperating in the settlement of the Saharan question and that a large number of allegations in this regard and many untruths are linked primarily to the complexity of the operations forming part of the Settlement Plan, to the fact that the process involves matters with which the United Nations has never had any experience, such as the identification of the electorate in particularly complex conditions (a tribal and nomadic society in the Sahara Desert), and to the policy of simplification, which necessarily involves reduction, and of disinformation which the other party and its allies pursue systematically in order to try to pre-empt the current process and head it in another direction which they prefer and have relentlessly been calling for.

Geneva, 16 April 1996